

PATRICIA BARBOSA, Esq. (SBN 125865)
JORDON METZ, Esq. (SBN 167355)
BARBOSA, METZ, IKEDA & HARRISON, LLP
17547 Ventura Blvd., Suite 310
Encino, CA 91316
Tel: (818) 386-1200
Fax: (818) 386-1212
pbarbosa@bmihlaw.com
jmetz@bmihlaw.com

Attorneys for Plaintiff
HOLLYNN D'LIL

DENNIS D. STRAZULO, Esq. (SBN 124695)
SARA WILSON, Esq. (SBN 172888)
STRAZULO FITZGERALD LLP
275 Battery Street, Suite 200
San Francisco, California 94111
Tel: (415) 394-9500
Fax: (415) 934-9501
swilson@strazlaw.com

Attorneys for Defendant
MONTGOMERY VILLAGE LIMITED PARTNERSHIP

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOLLYNN D'LIL,

Plaintiff,

v.

MONTGOMERY VILLAGE LIMITED
PARTNERSHIP; AND DOES 1 through 35,
Inclusive,

Defendants.

CASE NO. 4:08-CV-04690-SBA

HON. SAUNDRA B. ARMSTRONG
Civil Rights

**CONSENT DECREE FOR
SETTLEMENT BETWEEN
PLAINTIFF AND DEFENDANT
MONTGOMERY VILLAGE
LIMITED PARTNERSHIP FOR
PLAINTIFF'S CLAIMS FOR
INJUNCTIVE RELIEF
[Concurrently filed with Proposed
Order]**

/ No trial date set: General Order 56

CONSENT DECREE AND ORDER

1. Plaintiff HOLLYNN D'LIL ("Plaintiff") filed her Complaint in this action on
October 9, 2008 to enforce provisions of the Americans with Disabilities Act of 1990 ("ADA"),
42 U.S.C. §§ 12101 *et seq.*, and California Civil Code §§ 51; 54; and 54.1, and California

1 Health & Safety Code §§ 19952 and 19955 *et seq.*, against Defendant MONTGOMERY
 2 VILLAGE LIMITED PARTNERSHIP (“Defendant”), and DOES 1-35, Inclusive. Plaintiff
 3 and Defendant are collectively referred to herein as the “Parties.” Plaintiff alleged that
 4 Defendant violated Title III of the ADA and California civil rights laws and statutes by failing
 5 to provide full and equal access to its facilities, services and accommodations at
 6 MONTGOMERY VILLAGE located at 911 Village Court, Santa Rosa, County of Sonoma,
 7 California (“MONTGOMERY VILLAGE”). Plaintiff and Defendant MONTGOMERY
 8 VILLAGE now seek to settle all of Plaintiff’s claims for injunctive relief against
 9 MONTGOMERY VILLAGE, and agree that the terms of this Consent Decree will satisfy all of
 10 Plaintiff’s claims for injunctive relief.

11 2. Defendant MONTGOMERY VILLAGE denies all of the allegations in the
 12 Complaint filed by Plaintiff, and by entering into this Consent Decree and concurrently-filed
 13 Proposed Order does not admit liability to any of the allegations in Plaintiff’s Complaint filed
 14 against MONTGOMERY VILLAGE. Plaintiff and Defendant hereby enter into this Consent
 15 Decree and Order for the purpose of entering into an early settlement of Plaintiff’s claims for
 16 injunctive relief without the need for protracted litigation, and without the admission of any
 17 liability for any allegations in Plaintiff’s Complaint.

18 **JURISDICTION:**

19 3. Plaintiff and Defendant hereby agree that the Court has jurisdiction of Plaintiff’s
 20 Complaint pursuant to 28 U.S.C. § 1331 for alleged violations of the Americans with
 21 Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* and for supplemental jurisdiction for
 22 California civil rights laws and regulations.

23 4. In order to avoid the costs, expense, and uncertainty of protracted litigation, the
 24 parties to this Consent Decree agree to entry of the concurrently Proposed Order to resolve all
 25 of Plaintiff’s claims regarding injunctive relief against Defendant at MONTGOMERY
 26 VILLAGE and its related facilities. Accordingly, the parties agree to the entry of the
 27 concurrently-filed Proposed Order without trial or further adjudication of any issues of fact or
 28 law concerning Plaintiff’s claims for injunctive relief as set forth in the Complaint filed by

1 Plaintiff with this Court.

2 WHEREFORE, the Parties to this Consent Decree hereby agree and stipulate to the
3 Court's entry of this Consent Decree and concurrently filed Proposed Order, which provides as
4 follows:

5 **SETTLEMENT OF PLAINTIFFS' CLAIMS FOR INJUNCTIVE RELIEF:**

6 5. The Parties have reached an agreement regarding Plaintiff HOLLYNN D'LIL's
7 claims for injunctive relief as requested in her Complaint before this Court. Attached as
8 **Attachment A and Exhibit 1**, are all of the terms for the settlement of the injunctive relief as
9 agreed to between the Parties, fully set out. Said **Attachment A and Exhibit 1**, are hereby
10 referenced as if fully set forth herein as the full and complete agreement between the Parties for
11 settlement of all of Plaintiff's claims for injunctive relief as requested in Plaintiff's Complaint.

12 **NOTICE OF DELAY FOR CORRECTIVE WORK:**

13 6. The Parties agree that the Court will retain jurisdiction to resolve any disputes
14 between the Parties regarding the obligations set forth in this Consent Decree and Attachment
15 A. In the event that Parties have a dispute regarding compliance with any of the terms or
16 conditions of this Consent Decree and Order, the Parties agree that Defendant will provide
17 Plaintiff written notice of any delays within 10 days of knowing that a condition or term of the
18 Consent Decree and Attachment A cannot be completed as anticipated. No enforcement action
19 may be filed until 30 days after Plaintiff's receipt of Defendant's written Notice of Delay;
20 during said 30 days period the parties shall meet and confer in good faith to resolve issues
21 raised by the Defendant's Notice.

22 **PLAINTIFF'S MONETARY CLAIMS:**

23 7. The Parties have not reached an agreement to settle Plaintiff's monetary claims
24 including but not limited to: statutory, compensatory and personal injury damages, attorney
25 fees, litigation expenses and/or costs. Plaintiff's monetary claims may be resolved by separate
26 agreement, trial or motion to the Court.

27 ///

ENTIRE CONSENT ORDER:

8. This Consent Decree constitutes the entire agreement between the signing parties on the matter of Plaintiff's injunctive relief against Defendant MONTGOMERY VILLAGE, and no other statement, promise, or agreement, either written or oral, made by any of the parties or agents of any of the parties, that is not contained in this written Consent Decree and concurrently-filed Proposed Order, shall be enforceable regarding the matters described herein. This Consent Decree and concurrently-filed Proposed Order applies to Plaintiff's claims for injunctive relief only in the action before this Court.

CONSENT ORDER BINDING ON PARTIES AND SUCCESSORS IN INTEREST:

9. This Consent Decree and Order shall be binding on Plaintiff HOLLYNN D'LIL and Defendant MONTGOMERY VILLAGE LIMITED PARTNERSHIP and any successors in interest. The Parties have a duty to so notify all such successors in interest of the existence and terms of this Consent Decree and concurrently-filed Proposed Order during the period of the Court's jurisdiction of this Consent Decree and Order.

TERM OF THE CONSENT DECREE AND ORDER:

10. This Consent Decree and concurrently filed Proposed Order shall be in full force and effect once approved by the Court. The Court shall retain jurisdiction of this action to enforce provisions of this Order in the event that Plaintiff alleges that Defendant has failed to comply with any of the terms of this Consent Decree for a period of twenty-four months from the date the Court approves this Consent Decree, or 90 days from Defendant's notice of completion of the work, whichever is later. The terms of injunctive relief, as set forth in **Attachment A and Exhibit 1** are meant to be permanent changes. In the event that Parties have a dispute regarding compliance with any of the terms or conditions of this Agreement, the Parties agree and stipulate to the Court retaining jurisdiction to enforce this Agreement, and agree to follow the procedures set forth Paragraph 6 herein (or if Plaintiff is the complaining party, she shall give the Defendant notice in writing, and the Parties shall meet and confer no later than 30 days after Defendant's receive said notice, before Plaintiff may file an enforcement action.).

SIGNATORIES BIND PARTIES:

11. Signatories on the behalf of the parties represent that they are authorized to bind the parties to this Consent Decree and the concurrently filed Proposed Order. This Consent Decree and concurrently filed Proposed Order may be signed in counterparts and a facsimile signature shall have the same force and effect as an original signature.

APPROVED AS TO FORM:

Dated: August 30, 2010

PATRICIA BARBOSA
JORDON METZ
BARBOSA, METZ, IKEDA & HARISSON

/s/
Attorneys for Plaintiff
HOLLYNN D'LIL

Dated: August 25, 2010

DENNIS D. STRAZULO
SARA WILSON
STRAZULO FITZGERALD LLP

/s/
Attorneys for Defendant
MONTGOMERY VILLAGE LIMITED
PARTNERSHIP

PARTIES' APPROVAL:

Dated: August 25, 2010

HOLLYNN D'LIL

/s/
Plaintiff

1 Dated: August 30, 2010

MONTGOMERY VILLAGE LIMITED
PARTNERSHIP

2
3
4 /s/

Defendant
Name: DAVID CODDING
Title: President, Lakeside Leasing, General
Partner, MONTGOMERY VILLAGE LIMITED
PARTNERSHIP

5
6
7
8 Dated: August 25, 2010

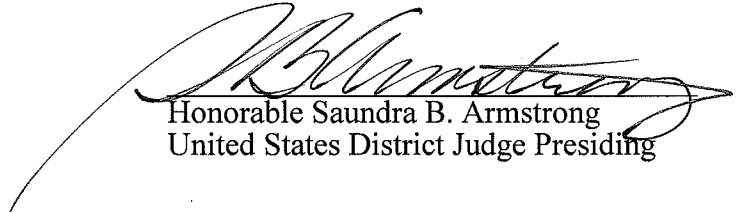
MONTGOMERY VILLAGE LIMITED
PARTNERSHIP

9
10
11 /s/

Defendant
Name: MELISSA WILLIAMS
Title: V.P. of OPERATIONS

12
13
14 Pursuant to Stipulation, and for good cause shown, IT IS ORDERED.

15 Dated: March 28, 2011

16
17 
18 Honorable Sandra B. Armstrong
United States District Judge Presiding

Consent Decree and Order: Attachment A
Hollynn D'Lil v. Montgomery Village Limited Partnership
Case No. 4:08-CV-04690-SBA

MONTGOMERY VILLAGE LIMITED PARTNERSHIP ("Defendant") and HOLLYNN D'LIL ("Plaintiff") (collectively referred to as "Parties") agree to the following terms and conditions to be incorporated in the Consent Decree and Order, incorporated herein by reference, as settlement of Plaintiff's claims for injunctive relief in the civil case entitled *D'Lil v. Montgomery Village Limited Partnership, N. Dist.* Case No. 4:08-CV-04690-SBA. The parties agree that the following corrective work will be undertaken to eliminate barriers at Montgomery Village in Sonoma County, which is the subject facility for the above-cited case. All of the corrective work will be done in compliance with the standards and specifications for access as set forth in the California Code of Regulations, Title 24-2 and Americans with Disabilities Act Accessibility Guidelines (ADAAG) applicable at the time the corrective work is undertaken.

The corrective work to be done by Defendant will be made in stages, depending on the type of work to be done. For work that does not require a permit from an enforcing agency, the work will be completed no later than February 15, 2011. For work that requires a permit from an enforcing agency, the dates agreed upon are set forth in the item number. For work that requires additional time, the dates for work are set forth in the item number. The item numbers in Attachment A correspond to the item numbers on the Barrier's Report prepared by Plaintiff's expert, Karl Danz, dated April 14, 2009, cited herein by reference, but only to identify the item numbers for the work to be done.

BARRIER REMOVAL ITEMS:

- 1.1 Cross walk. Work already completed.
- 1.2 Ramp at door to Subway. Work completed.
- 1.3 Cross walk at Magowan. Part of larger path of travel at shopping mall. Defendant will submit permits by March 15, 2011. Defendant will commence work within 90 days after receiving permits, and will provide Plaintiff with a status report after receiving permits (with a proposed completion date).*
- 1.4 Cross walk at Midway Dr. Work completed.
- 1.5 Parking spaces on Hahman. Part of larger path of travel at shopping mall. Defendant will submit permits by March 15, 2011. Defendant will install or relocate the designated, accessible parking spaces as identified in Exhibit 1. Defendant will commence work within 90 days after receiving permits, and will provide Plaintiff a status report after receiving permits.*
- 1.6 Cross walk. Work completed.
- 1.7 Accessible parking in front of Sonoma. Work completed.
- 1.8 Accessible parking in front of Lucky's. Work completed.
- 1.9 Accessible parking in front of Ross. Work completed.
- 1.10 Men's Restroom. The work will be done by February 15, 2011.
- 1.11 Village Court. The permits will be submitted by January 15, 2011, and the work completed by August 31, 2011.

- 1.12 Curb ramp. Part of larger path of travel at shopping mall. Defendant will submit permits by March 15, 2011. Defendant will commence work within 90 days after receiving permits, and will provide Plaintiff a status report after receiving permits.*
- 1.13 Accessible parking at Coldwater Creek. Work completed.
- 1.14 Parking at WestAmerica Bank. This work will be done in accordance with the larger parking plan as identified in Exhibit 1.
- 1.15 Walkway from Copperfield's. Part of larger path of travel at shopping center. Defendant will submit permits by March 15, 2011. Defendant will commence work within 90 days after receiving permits, and will provide Plaintiff a status report after receiving permits.*
- 1.16 Cross walk. No work to be done.
- 1.17 Path of travel between Copperfield's and WestAmerica. Part of larger path of travel at shopping mall. Defendant will submit permits by March 15, 2011. Defendant will commence work within 90 days after receiving permits, and will provide Plaintiff a status report after receiving permits.*
- 1.18 Copperfield's south entrance. Part of larger path of travel at shopping mall. Defendant will submit permits by March 15, 2011. Defendant will commence work within 90 days after receiving permits, and will provide Plaintiff a status report after receiving permits.*
- 1.19 Walkway ramp at Liquor store. Work will be done by February 15, 2011.
- 1.20 Pathway on east side of Village Art. Work completed.
- 1.21 Village Court. The permits will be submitted by January 15, 2011, and the work completed by August 31, 2011.
- 1.22 Pathway east of Bank of America. Work completed.
- 1.23 Access parking, Bank of America. Work completed.
- 1.24 Women's Restroom. Work completed.
- 1.25 Cross walk, no work to be done.
- 1.26 Cross walk. Work completed.
- 1.27 Cross walk. Work completed.
- 1.28 Ramp at Men's Restroom. Work to be done by February 15, 2011.

*PARKING: All parking as identified in Exhibit 1 is to be completed by March 15, 2011, with the exception of the accessible parking associated with the path of travel modifications in the mid-cross blocks of the facilities, which will be done in coordination with the path of travel renovations.

CHURCH OF THE ROSES